

**NOTICE OF PROPOSED RULEMAKING**  
**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**PREAMBLE**

1. 

<b><u>Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R12-15-151	Amend
R12-15-207	Amend
R12-15-224	Amend
R12-15-805	Amend
R12-15-810	Amend
R12-15-816	Amend
R12-15-822	Amend
R12-15-1210	Amend
2. **The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  

Authorizing statute: A.R.S. § 45-105(B)(1)

Implementing statutes: A.R.S. §§ 45-594(A), 45-596(I), 45-599(J) and 45-1202(C)
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**  

Notice of Rulemaking Docket Opening: 12 A.A.R 2517, July 14, 2006
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  

Name: Rebecca Szafranski, Deputy Counsel, Legal Division

Address: Arizona Department of Water Resources  
3550 N. Central Ave.  
Phoenix, Arizona 85012

Telephone: 602-771-8472

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5. **An explanation of the rule, including the agency’s reasons for initiating the rule:**

The Department of Water Resources (“Department”) is proposing to make technical amendments to several of its rules to correct errors and conform rule language to statutory and other changes made after the rules became effective. Most of the amendments were identified in the Department’s most recent 5-year review report to the Governor’s Regulatory Review Committee. The following is an explanation of each proposed amendment:

**Article 1. Fees**

**R12-15-151. Fee Schedule**

R12-15-151(B)(4)(a) provides that the fee for a notice of intent to drill a well is \$10. R12-15-151(B)(4)(b) provides that the fee for an application for a permit to drill a new or replacement well is \$50. These fees were superseded by legislation enacted in 2003. That legislation established a fee of \$150 for filing a notice of intent to drill (\$100 if the proposed well is a small domestic well outside of an active management area and irrigation non-expansion area). A.R.S. § 45-596(I). The legislation established a fee of \$150 for filing an application to drill a new well or a replacement well in a new location. A.R.S. § 45-599(J). Because the fees are now set by statute, the Department proposes to delete R12-15-151(B)(4)(a) and (b).

**Article 2. Procedural Rules**

a. **R12-15-207. Correction of Clerical Mistakes**

R12-15-207 authorizes the Director or hearing officer to correct clerical mistakes in decisions, orders, rulings, process issued by the Department or

other parts of the record, and any errors in the record arising from oversight or omission. The reference to a hearing officer is outdated because the Department is no longer allowed to use a hearing officer to conduct administrative hearings. Instead, unless the Director conducts the administrative hearing directly, the Department is required to use the services of the Office of Administrative Hearings, which assigns an administrative law judge to hear contested cases. *See* A.R.S. §§ 41-1092.01(E) and (F). The Department proposes to amend R12-15-207 to delete all references to a hearing officer.

**b. R12-15-224. Ex Parte Communications**

R12-15-224 prohibits ex parte communications between a party to a contested case and the Director, a hearing officer, or other Department employee or consultant who is or may reasonably be expected to be involved in the decision-making process of the contested case. The reference to a hearing officer is outdated because the Department is no longer allowed to use a hearing officer to conduct administrative hearings. Instead, unless the Director conducts the administrative hearing directly, the Department is required to use the services of the Office of Administrative Hearings, which assigns an administrative law judge to hear contested cases. *See* A.R.S. §§ 41-1092.01(E) and (F). The Department proposes to amend R12-15-224 to delete all references to a hearing officer. Non-substantive changes will also be made to improve grammar and correct a typographical error.

**Article 8. Well Construction and Licensing of Well Drillers**

**a. R12-15-805. Examination for well drilling license**

R12-15-805(E) contains a reference to the National Water Well Association. After the rule was adopted, the name of the organization was changed to the National Ground Water Association. The Department proposes to amend R12-15-805(E) to delete “National Water Well Association” and replace it with “National Ground Water Association.”

**b. R12-15-810. Authorization to drill**

R12-15-810(A) provides that “upon mailing a duplicate copy of the notice of intent to drill as provided in A.R.S. § 45-596(D),” the director shall mail a drilling card to the designated well drilling contractor or single well licensee. This language is outdated because A.R.S. § 45-596(D) no longer provides that upon approval of a notice of intent to drill, the director shall mail a duplicate copy of the notice to the person submitting the notice. In 2002, the statute was amended to provide that upon approval of a notice of intent to drill, the director shall mail a drilling card to the well driller identified in the notice and shall mail notice of the issuance of the drilling card to the person filing the notice. The Department proposes to delete R12-15-810(A) because it is outdated and because the process for mailing a drilling card to the well driller is now covered in statute.

**c. R12-15-816. Abandonment**

R12-15-816(H) requires the installation of a surface seal in a well being abandoned if the well does not penetrate an aquifer. R12-15-816(H)(1) sets forth the specifications for the surface seal “[i]f the casing is removed from the top 20 feet of the well ....” R12-15-816(H)(2) sets forth the specifications for the surface seal “[i]f the casing is not removed from the top ten feet of the well ....” The reference to the top ten feet of the well in R12-15-816(H)(2) is incorrect. The rule should instead refer to the top 20 feet of the well. The Department proposes to correct this error by

amending R12-15-816(H)(2) to change “ten” to “20.” Non-substantive grammatical changes will also be made.

d. **R12-15-822. Capping of open wells**

R12-15-822 contains three subsections. Due to a typographical error, the third subsection is labeled as subsection D. The Department proposes to correct this error by changing the label of the third subsection to C.

**Article 12. Dam Safety Procedures**

**R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam**

The Department’s rules governing dam safety procedures classify dams according to their hazard potential: high, significant, low and very low. R12-15-1206(B). The rules provide that applications to construct high, significant and very low potential hazard dams must include, among other things, proof of a right to impound and appropriate surface water, although the language requiring the proof differs slightly. *See* R12-15-1208(A)(9) and R12-15-1211(A)(1)(e). However, the rule governing applications to construct low potential hazard dams does not include such a requirement. *See* R12-15-1210(A). Consequently, as currently written, R12-15-1210(A) allows construction of a low hazard dam without a demonstration that the applicant has a permit to impound and beneficially use the surface water that will be impounded by the dam.

The Department believes that the absence of the requirement to include proof of a right to impound and appropriate surface water in R12-15-1210(A) is due to a simple oversight when the rule was drafted. The Department proposes to amend the rule to add such a requirement.

6. **A reference to any study relevant to the rule that the agency reviewed and**

**either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The preliminary summary of the economic, small business, and consumer impact:**

An Identification of the Proposed Rule Making

Technical amendments are being proposed to rules within Articles 1, 2, 8, and 12 under Title 12, Chapter 15.

The proposed technical rule changes conform older rules to newer statutes, alter outdated rules already superseded in statute, correct organizational names mentioned in rule but which now have changed, and provide for greater clarity, consistency, and specificity while reducing confusion among the regulated public.

To correct an earlier oversight, changes are proposed to R12-15-1210. The proposed changes will require persons applying to construct or register low hazard potential dams to show proof of a right to appropriate and store surface water.

A Brief Summary of the Information Included in the Economic, Consumer, and Small Business Impact Statement

The proposed change to R12-15-1210 affects anyone statewide applying for a permit to construct a new low hazard potential dam or to register and operate a previously unregistered low hazard potential dam that impounds appropriable water. Recent examples include ranchers, and those who construct or operate power, water purification, or waste water treatment plants.

*Cost – Benefit Analysis*

*Probable Benefits and Costs to Agencies*

The Department will better serve the people of Arizona. The Department expects no cost impacts from the proposed technical changes, and expects that it and the

public will benefit through greater clarity, consistency, and specificity and reduced confusion.

*Probable Benefits and Costs to Political Subdivisions*

Beyond greater clarity and reduced confusion, the Department expects neither benefits nor costs to political subdivisions from the proposed changes to Articles 1, 2, and 8.

*Probable Benefits and Costs to Business, Including Small Business*

Beyond greater clarity and reduced confusion, the Department expects neither benefits nor costs to business, including small business, from the proposed changes to Articles 1, 2, and 8.

*The probable costs and benefits to private persons and consumers who are directly affected by the proposed rule making*

Beyond greater clarity and reduced confusion, the Department expects neither benefits nor costs to private persons and consumers from the proposed changes to Articles 1, 2, and 8.

*Employment*

No employment impact is expected from these technical amendments.

*State Revenues*

No impact on State revenues is expected from these technical amendments.

*Alternative Methods of Achieving the Proposed Rulemaking*

The Department expects no cost impacts from the proposed technical changes. It expects the proposed rule modifications to benefit the public through greater clarity, consistency, and specificity and reduced confusion.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Michael Hanrahan  
Address: 3550 N Central Ave  
Phoenix, AZ 85012  
Telephone: 602-771-8500  
Fax: 602-771-8688  
E-mail: mshanrahan@azwater.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how**

**persons may request an oral proceeding on the proposed rule:**

A public hearing on the proposed rules will be held on May 29, 2007 at 9:00 a.m. at the Arizona Department of Water Resources, 3550 N. Central Avenue, Phoenix, Arizona 85012, Second Floor, Salt River Conference Room.

Written comments will be accepted until May 29, 2007 at 5:00 p.m. Written comments should be addressed to:

Name: Kathleen Donoghue, Docket Supervisor  
Address: Arizona Department of Water Resources  
3550 North Central Avenue  
Phoenix, AZ 85012  
Telephone: (602) 771-8472  
Fax: (602) 771-8683  
Email address: kardonoghue@azwater.gov

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

**12. Incorporations by reference and their location in the rules:**

None.

**13. The full text of the rules follows:**



## **TITLE 12. NATURAL RESOURCES**

### **CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

#### **ARTICLE 1. FEES**

##### **R12-15-151. Fee Schedule**

A. No change.

B. The following fees shall be paid:

1. No change.

a. No change.

i. No change.

ii. No change.

b. No change.

i. No change.

ii. No change.

c. No change.

d. No change.

e. No change.

f. No change.

g. No change.

h. No change.

i. No change.

ii. No change.

iii. No change.

iv. No change.

2. No change.

a. No change.

b. No change.

c. No change.

d. No change.

e. No change.

f. No change.

3. No change.

- a. No change.
- b. No change.
- c. No change.
- d. No change.
- e. No change.

4. WELLS

~~a. Notice of intent to drill and issue drilling card ..... 10.00~~  
~~b. Application for permit to drill new or replacement~~  
~~well and issue drilling card ..... 50.00~~

- ~~e~~ a. No change.
- ~~d~~ b. No change.
- ~~e~~ c. No change.
- ~~f~~ d. No change.
- ~~g~~ e. No change.
- ~~h~~ f. No change.
- ~~i~~ g. No change.
- ~~j~~ h. No change.
- ~~k~~ i. No change.
- ~~l~~ j. No change.
- ~~m~~ k. No change.

5. No change.

- a. No change.
- b. No change.
- c. No change.
- d. No change.
- e. No change.
- f. No change.
- g. No change.

6. No change.

- a. No change.

- b. No change.
  - c. No change.
  - d. No change.
7. No change.
8. No change.
- a. No change.
  - b. No change.
  - c. No change.
  - d. No change.
  - e. No change.
  - f. No change.
  - g. No change.
  - h. No change.
  - i. No change.
  - j. No change.
    - i. No change.
    - ii. No change.
  - k. No change.
    - i. No change.
    - ii. No change.
9. No change.
- a. No change.
  - b. No change.
10. No change.
- a. No change.
    - i. No change.
    - ii. No change.
  - b. No change.
    - i. No change.
    - ii. No change.
  - c. No change.

- d. No change.
- 11. No change.
  - a. No change.
  - b. No change.
    - i. No change.
    - ii. No change.
    - iii. No change.
    - iv. No change.
  - c. No change.
    - i. No change.
    - ii. No change.
- 12. No change.
  - a. No change.
  - b. No change.
- 13. No change.
  - a. No change.
  - b. No change.
  - c. No change.
    - i. No change.
    - ii. No change.
  - d. No change.
- C. No change.

## **ARTICLE 2. PROCEDURAL RULES**

### **R12-15-207. Correction of Clerical Mistakes**

Upon a motion or on the initiative of the Director ~~or the hearing officer~~, the Director ~~or the hearing officer~~ may correct clerical mistakes in decisions, orders, rulings, any process issued by the Department or other parts of the record, and errors in the record arising from oversight or omission. The Director ~~or the hearing officer~~ shall give all parties and the Chief Counsel notice of any corrections made pursuant to this rule.

**R12-15-224. Ex Parte Communications**

- A. During the course of a contested matter, a party shall not make an ex parte communication or knowingly cause an ex parte communication to be made to the Director, ~~a hearing officer~~, or other Department employee or consultant who is or may reasonably be expected to be involved in the decision-making process of the contested matter.
- B. During the course of a contested matter, the Department personnel listed in subsection (A) shall not make an ex parte communication or knowingly cause an ex parte communication to be made to a party or a person who will be materially and directly affected by the outcome of the contested matter.
- C. Any of the Department personnel listed in subsection (A) of this rule who receives a written communication prohibited by this rule shall file a copy of the communication in the public docket and serve a copy on the Director ~~or the hearing officer~~, the Chief Counsel and all parties to the contested matter. Any of the Department personnel listed in subsection (A) of this rule who receives an oral communication prohibited by this rule shall file a summary of the communication in the public docket and serve a copy on the Director ~~or the hearing officer~~, the Chief Counsel and all parties to the contested matter.
- D. Upon receipt of an ex parte communication or a copy or summary of an ex parte communication made or knowingly caused to be made by a party in violation of this rule, the Director ~~or the hearing officer~~, to the extent consistent with the interests of justice and the policy of the underlying ~~states~~ statutes and rules, may require the party to show cause why his claim or interest in the contested matter should not be dismissed, denied or disregarded on account of such violation.
- E. For purposes of this rule, “ex parte communication” means any written or oral communication relating to the merits of a contested matter, except:
  - 1. Communications made in the course of official proceedings in the contested matter;

2. Communications made in writing, if a copy of the communication is promptly served on the Director ~~or the hearing officer~~, the Chief Counsel and all parties to the contested matter;
3. Oral communications made after adequate notice to all parties and the Chief Counsel;
4. Communications relating solely to procedural matters; and
5. As otherwise authorized by law.

## **ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS**

### **R12-15-805. Examination for ~~well-drilling license~~ Well Drilling License**

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. The Director may exempt a qualifying party from taking the section on general knowledge, and one or more of the specialized sections, if the qualifying party provides proof of passing an equivalent examination given by the ~~National Water Well Association~~ National Ground Water Association.

### **R12-15-810. Authorization to ~~drill~~ Drill**

- ~~A. The director shall, upon mailing a duplicate copy of the notice of intention to drill as provided in A.R.S. § 45-596(D), mail a drilling card to the designated well drilling contractor or single well licensee.~~
- ~~B~~ A. No change.
- ~~C~~ B. No change.

### **R12-15-816. Abandonment**

- A. No change.
- B. No change.

- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. A well not penetrating an aquifer shall include a surface seal, which shall be accomplished as follows:
  - 1. If the casing is removed from the top 20 feet of the well, a cement grout plug shall be set extending from two feet below the land surface to a minimum of ~~twenty~~ 20 feet below the land surface, and the well shall be backfilled above the top of the cement grout plug to the original land surface.
  - 2. If the casing is not removed from the top ~~ten~~ 20 feet of the well, a cement grout plug shall be set extending from the top of the casing to a minimum of ~~twenty~~ 20 feet below the land surface and the annular space outside the casing shall be filled with cement from the land surface to a minimum of ~~twenty~~ 20 feet below the land surface.
- I. No change.
- J. No change.
- K. No change.

**R12-15-822. Capping of ~~open wells~~ Open Wells**

- A. No change.
- B. No change.
- ~~D~~ C. No change.

**ARTICLE 12. DAM SAFETY PROCEDURES**

**R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam**

- A. An application package to construct, reconstruct, repair, enlarge, or later a low hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
1. No change.
  2. No change.
  3. No change.
  4. No change.
  5. No change.
  6. No change.
  7. No change.
  8. No change.
  9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
  - ~~9-10.~~ No change.
  - ~~10-11.~~ No change.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.